

said and done, the Joint Parties' approach is the only one that is practical, fair, non-punitive, and consistent with decades of Commission precedent.

**IV. IN IMPLEMENTING THE SHARING APPROACH PROPOSED
HERE, THE COMMISSION SHOULD ADOPT FLEXIBLE
FINANCIAL AND TECHNICAL QUALIFICATIONS STANDARDS
AND IMPOSE RIGID MILESTONE SCHEDULES.**

Although it does not directly bear on their spectrum sharing proposal, the Joint Parties believe that there is a nexus between the approach they have proposed above and the basic qualifications standards the Commission is to consider in the instant proceeding. Specifically, the Joint Parties believe that rigid financial and technical qualifications standards (e.g., those specified in Section 25.140 of the Commission's rules for the mature domestic fixed-satellite industry) are rendered unnecessary by the instant proposal to license all current nongeostationary MSS system applicants (except MSCI) across the entire 1610-1626.5 MHz and 2483.5-2500 MHz bands, and to license MSCI across the entire 1613.8-1626.5 MHz bi-directional band.

Upon adoption of the Joint Parties' proposal, all current nongeostationary applicants would be licensed to operate across their entire subject frequency bands, even though actual operation would be limited to assignments specified in the

Interim and/or Primary Sharing Plans. Because no applicant would be frozen out at the initial grant stage, and because both CDMA and TDMA/FDMA schemes can be accommodated, it would be unnecessary for the Commission to impose the high threshold qualifications criteria that strict financial and technical qualifications standards have been used to impose in the past.^{12/}

In effect, the construction milestones (with strict enforcement) would serve the same purpose as rigid financial qualifications standards, inasmuch as systems that cannot get financing would obviously fail to meet their construction milestones. Under this approach, the financial standards are imposed in a results-oriented fashion, and the regulatory burden on the Commission's staff to review and analyze complex financial and business plans is eliminated. Similarly, the marketplace will determine which access technique and system design is technically superior.

^{12/} This is not to suggest that the Commission should completely avoid imposing financial standards or refrain from disqualifying any applicant that fails (after ample opportunity to amend) to provide a feasible technical plan. To the contrary, such steps are necessary (and possibly statutorily mandated) to preserve the integrity of the service. The Joint Parties merely want to avoid a scenario where strict standards are used as a subterfuge to eliminate lingering mutual exclusivity (in keeping with the Commission's "policy" of avoiding comparative hearings in the satellite field).

To provide for efficient use of the spectrum by the initially authorized applicants, to prevent warehousing of the limited spectrum resource, and to preclude unqualified systems from delaying their inevitable demise, the Joint Parties call upon the Commission to impose a rigid set of construction milestones, and to act with all due haste to rescind the authorizations of systems that materially fail to meet their milestone obligations. Indeed, the key to the success of such a marketplace approach is strict adherence to the milestone schedules, and, to the extent possible, near automatic action to rescind the authorizations of systems that materially fail to meet those schedules.

V. CONCLUSION

For the foregoing reasons, the Joint Parties respectfully call upon the Commission to issue a notice of proposed rule making in this proceeding that incorporates either the full-band interference sharing approach outlined in the Committee Report or the spectrum sharing approach outlined above. Although the former approach is clearly preferable from a variety of public policy standpoints, the latter approach is also equitable and credible, in that all proposed nongeostationary MSS

systems will have the opportunity to establish systems, and the marketplace will determine which approach or approaches are indeed superior. The Commission cannot guarantee success or insulate systems from competition; all it can do is ensure to all qualified applicants the opportunity to succeed. That is what the Joint Parties' plan does.

Respectfully submitted,

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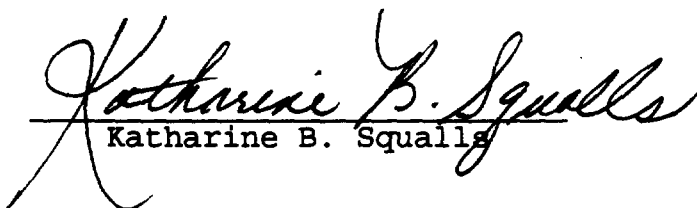
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